

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. BILL CUNNINGHAM

CO-CHAIR:
REP. KEITH WHEELER

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SEN. KIMBERLY LIGHTFORD
SEN. TONY MUÑOZ
SEN. SUE REZIN
SEN. PAUL SCHIMPF
REP. TOM DEMMER
REP. MIKE HALPIN
REP. FRANCES HURLEY
REP. STEVEN REICK
REP. ANDRÉ THAPEDI

MINUTES

July 14, 2020

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, July 14, 2020, at 11:30 a.m. in Room C-1 of the Stratton Building, Springfield IL. Co-Chair Wheeler called the meeting to order and announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee meetings. Other persons are encouraged to submit their comments to the JCAR office in writing.

ATTENDANCE ROLL CALL

X Senator Bill Cunningham	Representative Tom Demmer
X Senator John Curran	X Representative Mike Halpin
Senator Kimberly Lightford	X Representative Frances Hurley
X Senator Tony Muñoz	X Representative Steven Reick
X Senator Sue Rezin	X Representative André Thapedi
X Senator Paul Schimpf	X Representative Keith Wheeler

APPROVAL OF THE MINUTES OF THE JUNE 16, 2020 MEETING

Sen. Rezin moved, seconded by Rep. Halpin, that the minutes of the June 16, 2020 meeting be approved. The motion passed unanimously (10-0-0).

REVIEW OF AGENCY RULEMAKINGS

Liquor Control Commission – The Illinois Liquor Control Commission (11 Ill. Adm. Code 100; 43 Ill. Reg. 14571)

Sen. Schimpf moved, seconded by Rep. Thapedi, that JCAR, with the concurrence of the Illinois Liquor Control Commission, extend this rulemaking for an additional 45 days.

AGENCY RESPONSE

Environmental Protection Agency – Public Participation in the Air Pollution Control Permit Program (35 Ill. Adm. Code 252; 43 Ill. Reg. 7028)

JCAR Staff shall monitor EPA's ongoing response to JCAR's Recommendation.

CONSIDERATION OF OTHER RULEMAKINGS AND ISSUES

Illinois State Board of Education – Discussion of Plans for School Year 2020-2021

Amanda Elliott (by telephone) represented SBE. Sen. Schimpf asked how the fall reopening guidance published by SBE on June 23 was derived. Ms Elliott said that guidance was jointly issued by SBE and DPH. Sen. Schimpf asked whether SBE would need DPH's approval to modify this guidance. Ms Elliott said that any changes to the guidance would be made in collaboration with DPH. Sen. Schimpf asked if SBE and DPH believe this guidance carries the force of law. Ms Elliott said that only the applicable pieces of the Phase IV executive order and any subsequent orders are required (PPE, 50 person limit in one space, etc.). Co-Chair Wheeler thanked her for her hard work.

Department of Commerce and Economic Opportunity – Local Coronavirus Urgent Remediation Emergency (or Local CURE) Support Program (Emergency) (14 Ill. Adm. Code 700; 44 Ill. Reg. 11824)

Philip Keshen, Chief Financial Officer, Michelle Masoncup, General Counsel, and Khama Sharp, Deputy General Counsel, represented DCEO. The Local CURE program provides federally funded reimbursements to local governments for COVID-19-related expenses in the 97 counties with fewer than 500K people. The 5 largest counties and the City of Chicago applied directly to the federal government for, and received, reimbursement.

Local CURE Reimbursement for Economic Development Costs

Sen. Rezin, Sen. Curran and Rep. Reick: Why can local governments in the counties under the DCEO program not receive reimbursement for economic support payments when their counterparts in the 5 largest counties could.

Mr. Keshen: The State cannot afford to repay the federal government for disallowed costs. If DCEO were to advance funds to a local government that turned out not to have the proper controls in place to make sure the expenses were federally reimbursable, the State would be liable for those expenses. And, with 1,100 municipalities and thousands of special districts, it is difficult for DCEO to police all the applicants to make sure they are operating within the U.S. Treasury's parameters for reimbursable expenses. Although the Treasury does include economic support as one of the possible reimbursable expenses, DCEO doesn't think its guidelines are clear enough to avoid the risk of having costs disallowed. The reason economic development is not included under Local CURE is that there is already a Coronavirus Relief Fund (CRF) program designated for economic development: the Business Interruption Grant (BIG) program, which comprises 72% of DCEO's total CRF appropriation.

Sen. Curran: Questioned the fairness of allowing the 5 largest counties to receive economic development funds through both local government reimbursement and the BIG program while downstate counties could only receive them through BIG.

Mr. Keshen: Pointed out that \$159M in BIG is specifically earmarked for downstate.

Mr. Sharp: One cannot receive funds from the federal government and funds from BIG for the same purpose, so the 5 largest counties really don't get a second bite at the apple.

Sen. Curran: If a municipality were to decide to use Local CURE funds for economic support and DCEO did not approve the expense, the municipality rather than the State would be on the hook for the funds. It is precisely because of this reality that local governments can be trusted to be particularly careful when proceeding with economic stimulus under CURE.

Rep. Reick: Expressed frustration that local governments in the 97 counties with the wherewithal to manage their own federal grants were not allowed to do so, but had to have DCEO, with its reticence to reimburse for economic development expenses, do this for them.

Rep. Halpin: It is much better for DCEO to be running this on a statewide basis so it can see which municipalities need the money and get that money to them. This is a fair way, given the way the State's hands were tied by the federal government, to get some of the money to local governments that need it.

Rep. Halpin: DCEO's hands are tied by the federal requirements and by statute. It was not DCEO's choice to treat the 5 counties differently from the other 97. I pushed for a bigger allotment of BIG funds for downstate precisely because the 5 counties had already received economic development funds, but was forced to settle for the one-third allocation in the final bill. Designing this as a reimbursement program means that communities that are wealthy and can afford to spend the money up front are going to be able to use that money to meet COVID-19 expenses while the poorer communities don't have the cash on hand and will not be able to offer that assistance.

Mr. Keshen: In both Local CURE and BIG, DCEO is focusing on disproportionately impacted areas to ensure that they get helped first.

Sen. Curran: The IL Municipal League (IML) reached out to DCEO to start a dialogue about this grant program but no substantive conversations had taken place.

Mr. Keshen: DCEO had spoken with IML and the IL Association of Counties (IAC) very early in the process.

November 1 Deadline

Sen. Rezin, Sen. Curran and Rep. Reick: Sec. 700.80(d) of the rule provides that "Funding allotments assigned or requested by units of local government...but for which reimbursement has not been sought by November 1, 2020, may be forfeited, and additional funding distributed to other local governments".

Sen. Rezin: Why is there a November 1 deadline for seeking reimbursements if the eligible spending period extends through December 30?

Mr. Keshen: This is a permissive date that allows DCEO to reallocate funds to where they are most needed. Every local government that has an allotment under this program will be able to spend it through December 30. Under the November allotment, if any local government does not have enough reimbursable costs to absorb its allotment, the money can be applied to other places in Illinois with greater need.

Sen. Rezin: What if all the local governments ask for their full allotments to be reimbursed and the total exceeds the \$250M appropriated?

Mr. Keshen: DCEO is building in a mechanism by which local governments continually update DCEO on their needs. DCEO is not trying to pull funds from local governments that need it.

Ms Masoncup: DCEO has the flexibility to extend the November 1 deadline if the federal government extends the reimbursement period.

Mr. Keshen: Until the 6/30 update to the federal guidance, GOMB believed that funds had to be completely out of the Illinois accounts before December 30. The November 1 deadline was to ensure that all available funds could be released in time so the State didn't lapse any federal dollars.

Rep. Reick: Can DCEO convey its intent to counties that the November 1 date is not a hard deadline to submit all reimbursement expenses, especially since local governments cannot anticipate expenses required by a surge in infections during November and December.

Mr. Keshen: DCEO has done so. The November 1 provision has always said "may".

Rep. Reick: The IAC believes that the emergency rule does set a hard deadline. Somewhere along the line, there was either a badly written rule or a sore lack of communication with local governments subject to that rule.

Sen. Curran: Can the rule be clarified on this issue?

Ms Masoncup: DCEO wants the discretion to check for unused allotments on November 1.

Rep. Halpin: Some downstate colleagues have said regularly that their districts have not been hit hard, and masks and social distancing are unnecessary for their areas. Allowing some of those communities to receive money above and beyond their actual costs is to the detriment of districts like mine, which borders Iowa where cases have been increasing, is unfair.

Business Interruption Grant (BIG) Program

Sen. Curran: The first round of approvals for BIG have taken place. Can DCEO provide the precise breakdown among regions?

Mr. Sharp: Information is still being processed.

Sen. Curran: Please send that information to JCAR when it is available.

Co-Chair Wheeler: One of the things that came up in discussions with stakeholders was that some businesses, such as event spaces, banquet halls, and businesses with low head counts, were unable to receive BIG funding. Does BIG need to be expanded if Local CURE cannot provide economic support funds? What is the status of BIG rules?

Mr. Scott: BIG rules were to be filed this afternoon, but DCEO is still working through some issues with stakeholders.

Co-Chair Wheeler: Applications for BIG are already being taken. How can this grant program be implemented without rules?

Mr. Scott: A Round 1 application process is ongoing, but a larger round will take place once rules have been filed.

Co-Chair Wheeler: How can a business owner apply for Round 1 funding?

Mr. Scott: The information is on DCEO's website and had been announced through other groups as well. Round 1 applies only to restaurants and bars.

Co-Chair Wheeler: Is Round 1 defined in the statute?

Mr. Scott: It is not. Rules weren't mandatory because DCEO already had enabling legislation.

Co-Chair Wheeler: DCEO does have enabling legislation, but it is making policy choices that are not delineated in rule. This violates the IAPA, which DCEO is required to follow.

Mr. Scott: DCEO is waiting to disburse money until rules are in place. Round 1 is much smaller than Round 2 will be.

Co-Chair Wheeler: DCEO is out of line.

Next Steps

Rep. Thapedi: What is the program doing for the next month?

Ms Masoncup: DCEO is selecting a third party administrator to help process reimbursements efficiently. DCEO is currently allotting funds to special districts. These things are happening concurrently because DCEO is focused on making sure that the money gets into the hands of local governments. If the process were to stop until the next JCAR meeting, it would further delay reimbursement.

Sen. Curran and Rep. Reick: If the Local CURE rule were up for a vote this month, they would vote to suspend it.

Sens. Rezin and Curran, Reps. Reick and Thapedi, and Co-Chairs Wheeler and Cunningham: Asked DCEO to work with stakeholders and JCAR staff to address the problems with this rule.

Sen. Curran: DCEO could begin issuing reimbursements to local government while it is still hammering out an economic stimulus component of this program.

Mr. Keshen and Ms Masoncup: DCEO will work with stakeholders. We cannot commit to a change in the rule without consulting DCEO senior staff.

Ms Masoncup: The rule's November 1 deadline requires clarification.

CERTIFICATION OF NO OBJECTION

Sen. Rezin moved, seconded by Sen. Curran, that the Committee inform the agencies to whose rulemakings the Committee has not voted an Objection or Extension, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based upon the Agreements for modification of the rulemaking made by the agency, no Objections will be issued. The motion passed unanimously (10-0-0).

ANNOUNCEMENT OF AUGUST MEETING DATE

Co-Chair Wheeler announced that the next JCAR meeting is scheduled for Tuesday, August 11, 2020, in Room C600 of the Michael A. Bilandic Building, Chicago IL at 11:00 a.m.

ADJOURNMENT

Co-Chair Cunningham moved, seconded by Rep. Hurley, that the meeting stand adjourned. The motion passed unanimously (10-0-0).

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